



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/573,597

03/24/2006

Gino Cocchi

P08891US00/MP

2801

881 7590 02/20/2009

STITES & HARBISON PLLC
1199 NORTH FAIRFAX STREET
SUITE 900
ALEXANDRIA, VA 22314

EXAMINER

NICHOLS II, ROBERT K

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

02/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,597	Applicant(s) COCCHI ET AL.	
	Examiner ROBERT K. NICHOLS II	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/06/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because the use of legal term “said” and “means” throughout the abstract.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 7, line 2 and claim 11, line 1 recite “a reference.” There is insufficient antecedent basis for this limitation in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3754

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 4-5 recite "in which is mounted with a seal a rotatable drum" it is unclear as to whether the seal, drum or both the seal and drum are mounted with the cylindrical chamber.

Appropriate correction required.

Claim 5 recites the limitation "the die plates" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bruhn (US 1,640,528).

It is noted that the preamble, herein, "Piston device for dispensing ice cream, for ice cream machines of the "instant' type" is not being given weight because it has been held that "If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or

Art Unit: 3754

intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999)."

Regarding claim 1, Bruhn discloses a dispensing device including a whisking cylinder 10 closed by a hatch 11 having an aperture communicating with the whisking cylinder 10, characterized in that the hatch 11 has a cylindrical chamber 12 of relatively large diameter in which is mounted with a seal 18, a rotatable drum or disk 15 carrying a plurality of cylindrical housings 17, each having in its lower lateral area a through hole which can be aligned with the aperture for communication with the whisking cylinder 10 (see figures 1 and 10, and page 1, lines 47-66). It is noted element 10 and the associated structure is a "whisking cylinder" in as much as applicants "whisking cylinder" due to the specification being silent as to what constitutes a "whisking cylinder".

Regarding claim 6, Bruhn discloses the drum 15 includes in its lower part a handwheel 16a for rotating it in steps (see figures 1 and 2, and page 1, lines 56-59).

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Heiss et al. (US 3,066,830).

It is noted that the preamble, herein, "Piston device for dispensing ice cream, for ice cream machines of the "instant' type" is not being given weight because it has been held that "If the body of a claim fully and intrinsically sets forth all of the limitations

Art Unit: 3754

of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999)."

Regarding claim 1, Heiss discloses a piston dispensing device including a whisking cylinder or stirring chamber 40 closed by a hatch 45 having an aperture communicating with the whisking cylinder 40, characterized in that the hatch 45 has a cylindrical chamber of relatively large diameter in which is mounted with a seal 54, a rotatable drum 10 carrying a plurality of cylindrical housings (piston housings), each having in its lower lateral area a through hole which can be aligned with the aperture for communication with the whisking cylinder 40 (see figure 1, column 2, lines 34-37 and column 10, lines 13-22).

Regarding claim 2, Heiss discloses a vertically slidable piston 52 fitted into each of the said cylindrical housings, and means being provided for the selective movement of the said pistons 52 (see figure 1 and column 3, lines 9-20).

Regarding claim 5, Heiss discloses the cylindrical housings carrying the die plates or nozzles 64 being positioned at equal distances from each other and at the same distance from the periphery of the drum 10 (see figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heiss et al. (US 3,066,830) in view of Giannella et al. (US 3,934,759).

Regarding claim 3, Heiss discloses that each of the cylindrical housings is provided at its base with a die plate or nozzle 64 provided with a through hole 65 (see figures 1 and 5). However, Heiss fails to disclose the die plate having a series of through holes.

Giannella teaches a piston dispensing device including a cylindrical housing 14 provided at its base with a die plate or nozzle 64 having a series of through holes or channels 68 in order to produce an exit stream which minimizes splashing of fluid content as it exits from the nozzle under pressure (see figure 3 and column 4, lines 30-34).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the Heiss device with die plates having a series of through holes, as taught by Giannella, in order to minimize splashing of the fluid content as it exits from the nozzle.

Art Unit: 3754

Regarding claim 4, Heiss discloses the pistons 52 being provided at their bases with a series of projections or plugs (i.e. nozzle projections) complementary to the holes 65 of the die plates 64, in such a way that the content remaining in the holes 65 is fully expelled at the end of the dispensing stage (see figure 5 and column 3, lines 57-67).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heiss et al. (US 3,066,830) in view of Giannella et al. (US 3,934,759), as applied to claims 3 and 4 above, further in view of Cocchi (US 2003/0226858).

Regarding claim 7, the combination of Heiss and Giannella discloses all the elements of the claimed invention except each piston being provided with a reference and anti-rotation pin which can slide in a vertical groove in the cylindrical housing in which the corresponding piston is fitted.

Cocchi teaches a piston dispensing device wherein the piston is provided with a reference or control rod 6 and anti-rotation pin 106 which can slide in a vertical groove 206 in the cylindrical housing 4 in which the piston is fitted in order to guide the piston preventing rotation.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the combination device of Heiss and Giannella with a reference and anti-rotation pin which can slide in a vertical groove in the cylindrical housing in which the corresponding piston is fitted, as taught by Cocchi, in order to guide the piston preventing rotation.

Art Unit: 3754

Regarding claim 8, Heiss discloses each piston 52 being provided in its upper part (piston rod head 56) with a substantially horizontal slot or groove which can be engaged by an element 81a for raising and lowering the engaged piston 52 (see figure 1 and column 4, lines 25-36).

Applicant should note that reference numerals throughout claims 1-11 do not represent a positive limitation. Therefore, reference numerals throughout the noted claims have not been given patentable weight.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carpigiani (US 3,422,995), Carpigiani (US 3,052,381), Mueller (US 3,001,770), Page (US 2007/0095421), Daanen et al. (US 2,657,649), Anderson (US 2,782,735), Anderson (US 2,028,266) and Nixon (US 3,727,799) show other dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754